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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[EB Docket No. 04-296; DA 12-834]

Petition Filed by American Cable Association for Partial Reconsideration of the Commission's Emergency Alert System Fifth Report and Order; Announces Schedule for Pleading Cycle

AGENCY: Federal Communications Commission.

ACTION: Petition for partial reconsideration.

SUMMARY: In this document, the Federal Communication Commission's (Commission) Public Safety and Homeland Security Bureau (Bureau) gives notice that the American Cable Association (ACA) has filed a petition for partial reconsideration of the Commission's Emergency Alert System (EAS) Fifth Report and Order, and announces a schedule for the pleading cycle.

DATES: Oppositions/Comments are due on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and replies are due on or before **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by EB Docket No. 04-296 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications

Commission.

- People with Disabilities: Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Gregory M. Cooke, Associate Chief, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418-2351, or by email at gregory.cooke@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in EB Docket No. 04-296, DA 12-834, released on May 25, 2012. This document is available to the public at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0525/DA-12-834A1.doc.

Synopsis of the Public Notice

1. On April 23, 2012, the Commission received a petition filed by the ACA for partial reconsideration of that portion of the Commission's EAS Fifth Report and Order (77 FR 16688, March 22, 2012) "requiring operators of cable systems lacking physical ... broadband Internet connections to seek waivers under the Commission's standard procedures." ACA proposes that the Commission establish a streamlined waiver process for cable systems that serve

less than 501 subscribers, subject to a showing of compliance with specified conditions, and that waivers obtained through this process last at least one year. By the Public Notice, the Commission establishes a pleading cycle for oppositions and replies in response to the petition as indicated above. In addition, the Commission invites comment on a number of specific questions related to the petition as described below.

Background

2. The Fifth Report and Order will require all EAS Participants to convert EAS messages formatted in the Common Alerting Protocol (CAP) into messages that comply with EAS Protocol requirements, and to monitor the Federal Emergency Management Agency's Integrated Public Alert and Warning System (IPAWS) for federal CAP-formatted alert messages using whatever interface technology is appropriate. The Commission noted that "the primary method of distributing CAP messages will be via a broadband Internet connection." Accordingly, the Commission also decided in the Fifth Report and Order that "the physical unavailability of a broadband Internet service offers a presumption in favor of a waiver." The Commission noted that this presumption would primarily benefit smaller EAS Participants, for whom obtaining CAP capable EAS equipment would be a relatively larger financial commitment. However, the Commission also determined that such a waiver "likely would not exceed six months," with an option of renewal, given that broadband Internet access "may become available at some point after a waiver has been granted, and that alternate means of distributing CAP alert messages, such as satellite delivery, may also become available."

3. In its Petition, ACA argues that the Commission's foregoing presumption would "not provide meaningful relief for ... small operators" due to the "need to devote significant administrative resources to preparing waiver requests." ACA argues that to ameliorate this concern the Commission should implement an streamlined waiver process for systems serving fewer than 501 subscribers, requiring a "waiver request certification ... signed by a company

representative or officer responsible for its truthfulness, [which] should include the following: ...

- A statement that the cable operator currently does not have physical access to a wireline broadband connection at the system head-end.
- A statement that obtaining physical access to a wireline broadband connection would require costs in excess of a provider's normal installation drop fee (i.e. special construction costs or line extension fees)."

ACA argues that "[w]aivers granted pursuant to this process should be granted for at least a period of one year, with renewal years available, or until the operator: (i) obtains broadband Internet service at the system headend; or (ii) can obtain broadband Internet service without incurring additional construction or set-up fees, such as line extension charges."

Discussion

4. The Commission seeks comment on ACA's Petition. It also seeks comment on several specific issues. First, it notes that the its Fifth Report and Order nowhere states that a wireline broadband connection is necessary to comply with the Commission's requirement that EAS Participants be able to receive CAP-formatted alerts by June 30, 2012. Accordingly, it seeks comment whether any presumption in favor of granting a waiver based on lack of physical access to broadband should be limited to an EAS Participant's lack of physical access to a wireline broadband connection, as ACA requests. Stated differently, would an EAS Participant's physical access to, for example, a wireless or satellite broadband connection provide sufficient bandwidth for purposes of complying with the relevant requirements of the Fifth Report and Order?

5. The Commission also seeks comment on ACA's suggestion that the Commission should, at least in part, consider the costs to EAS Participants of obtaining broadband Internet access service when assessing whether to grant waiver relief. If so, how should the Commission weigh such cost in this assessment? For example, ACA requests that the Commission waive CAP compliance for cable systems serving fewer than 501 subscribers if the cost of broadband

access is “in excess of a provider’s normal installation drop fee (i.e. special construction costs or line extension fees).” Is this the proper criterion for such an assessment? If not, what specific costs should the Commission consider to make such an assessment? Should such an assessment be dependent on the financial condition of the petitioner? If so, what standard should the Commission use for assessing whether a waiver is warranted based on financial condition? How much and what kind of information about a petitioner’s financial condition should be submitted in support of a waiver request? Should information as to where the waiver applicant is in its EAS equipment replacement cycle be a factor in the Commission’s analysis? Should factual statements in the waiver request be certified by a corporate officer, rather than some other representative? Does the proposed one-year period for waivers, terminable once broadband access becomes available without “additional construction or set-up fees,” adequately address the Commission’s concerns about changing circumstances? Would a six-month reporting condition, attesting to the continuing compliance with the original conditions, be a better way of addressing those concerns without adding unnecessary costs?

6. Finally, in its petition, ACA proposes that those filing a waiver certification include “[a]n affirmation that the operator understands it must continue to operate its legacy EAS equipment.” Is this criterion sufficient to ensure that subscribers remain able to receive timely and accurate EAS alerts? Should the Commission, for example, require that the waiver certification include an affirmation that the cable operator continues to operate legacy EAS equipment that is capable of receiving and transmitting the Emergency Action Notification?

Procedural Matters

A. Ex Parte Presentations

7. This matter is subject to the “permit-but-disclose” provisions of the Commission’s ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business

days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

B. Comment Filing Procedures

8. Interested parties may file oppositions and other comments and reply comments on or before the dates indicated on the first page of this document. All pleadings must reference EB Docket No. 04-296. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

9. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

10. Address all filings to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to Gregory Cooke, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications

Commission, Room 7-A744, 445 12th Street, SW, Washington, DC 20554, or by e-mail to Gregory.Cooke@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

11. Documents in EB Docket No. 04-296 are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, D.C. 20554. The documents are available for purchase from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com. These documents are also available for viewing on the Commission's website at <http://www.fcc.gov/cgb/ecfs>.

FEDERAL COMMUNICATIONS COMMISSION

Lisa M. Fowlkes,
Deputy Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2012-13901 Filed 06/07/2012 at 8:45 am; Publication Date: 06/08/2012]